

Case Name:
**THE SOCIETY OF PREVENTION OF CRUELTY
TO ANIMALS v. SKIFFINGTON**

[1978] N.J. No. 152

19 Nfld. & P.E.I.R. 144

50 A.P.R. 144*

Newfoundland District Court Judicial Centre of Gander

Barry, D.C.J.

May 9, 1978

(13 paras.)

CASES JUDICIALLY NOTICED:

Rowley v. Murphy, [1963] Q.B. 43, appld. [para. 11].
Steele v. Rogers (1912), 28 T.L.R. 198, appld. [para. 11].

STATUTES JUDICIALLY NOTICED:

Protection of Animals Act, R.S.N. 1970, c. 311, ss. 2(a) [para. 6]; 2(b) [para. 7]; 3(a) [para. 4].

AUTHORS AND WORKS JUDICIALLY NOTICED:

Webster's New Twentieth Century Dictionary (2nd Ed.) [para. 6].

COUNSEL:

J. THOMAS EAGAN, for the appellant

This case was heard on February 20, 1978, at Gander, Newfoundland, before BARRY, D.C.J., of the Newfoundland District Court, Judicial Centre of Gander.

On May 9, 1978, BARRY, D.C.J., delivered the following judgment:

1 BARRY, D.C.J.:-- On September 9, 1977, two Fisheries Officers came upon a boat in the harbor at Brooklyn, Bonavista Bay, close to the shore. There were two men in the boat and the officers watched them as they drove their boat back and forth herding dolphins and leading them towards the [*page145] shoal part of the harbor. The respondent was in a green boat with another man. At the front of the boat the Fisheries officers could see dolphins breaking water. When a dolphin would turn right, the boat would cut it off. The man in front of the boat had a long pole and was hitting at the animals, driving them ashore. After about fifteen or twenty minutes they were successful in grounding one of the dolphins. One of the officers stated in evidence that he could hear noises like clubbing sounds hitting flesh. The respondent was seen driving an eel spear into the breathing hole of the dolphin.

2 The officers then came up to the fishermen. The dolphin was there in the shoal water with its right eye bleeding and damaged. There were numerous marks on its body as if it had been hit by a club. Every time the dolphin would breathe it would blow out blood. One of the officers tried to drive the dolphin out into the bay but it would go out a short distance and come back again. The officer, believing that the dolphin could not survive its injuries, then killed it by shooting it with a rifle.

3 The charge laid against the respondent is that he

"did cause unnecessary pain, suffering and injury to an animal, TO WIT: a dolphin, by beating the said animal with a club and poking out the eye of the said animal contrary to Section 3(a) of the Protection of Animals Act, Revised Statutes of Newfoundland, 1970, Chapter 311."

4 The relevant portion of the above-mentioned section under which the respondent was charged is as follows:

"3. If any person

- (a) shall cruelly beat, kick, ill-treat, abuse . . . or to otherwise . . . mutilate, torture, infuriate or terrify . . . any animal; . . . or shall, by doing . . . any act, cause any unnecessary suffering . . . to any animal; . . .

such person shall be guilty of cruelty within the meaning of this Act . . ."

5 There is no doubt in my mind the beatings and spearing of the dolphins by the respondent in this case are acts of [*page146] cruelty within the definition given in the above-quoted portion of Section 3(a) of the Protection of Animals Act. The question then arises as to whether a dolphin, found in the circumstances which existed in this case, is "an animal" within the definition of the word "animal" set out in the Act. In other words, is the dolphin as found and captured by the respondent a creature of the kind which is intended to be protected by the Protection of Animals Act?

6 The Act in Section 2(a) defines "animal" by stating that it "means any domestic or captive animal". In Webster's New Twentieth Century Dictionary (2nd Ed.), the word "dolphin" is defined as "any of several species of delphinus, a genus of cetaceous mammals characterized by a beaklike snout and conical teeth in the upper jaw."

The word "cetacean" in the same dictionary is defined as

"cetus, large sea animal, whale; of a group of hairless fish like water mammals with paddle like forelimbs, - whales, porpoises and dolphins and cetaceans."

7 The dolphin in question here had been found swimming in a bay bounding the Atlantic Ocean of which it was an inhabitant. Under these circumstances it clearly was not a domestic animal under any definition of the word. The next question then is whether it could be said to be a "captive animal". The Act defines "captive animal" as follows:

"2.(b) "captive animal" means any animal (not being a domestic animal) of whatsoever kind of species and whether a quadruped or not, including any bird, fish or reptile, which is in captivity or confinement, or which is maimed, pinioned, or subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from captivity or confinement."

8 This definition would include every kind of animal, bird, fish or reptile which is (a) in captivity or confinement, or (b) maimed, etc. for the purpose of hindering or preventing its escape from captivity or confinement.

9 No doubt a dolphin being a sea animal would be included in the general definition of "animal" without even considering its appropriate category.

[*page147] [10] That being so we must now be ascertained whether the dolphin in this case, when being beaten by the respondent was in captivity or confinement, or whether it had been maimed, etc., for the purpose of hindering its escape from captivity or confinement. In order to do this, it is necessary to determine the proper interpretation of the words "in captivity or confinement" within the meaning of the Act.

11 A case in point is that of *Rowley v. Murphy*, [1963] Q.B. 43. There a wild stag, which was being hunted, slipped on a paved road and fell under a stationary van, whereupon it was set upon by a number of men and killed with a knife. Upon a charge of cruelty to the animal against the persons concerned, brought under the Protection of Animals Act, 1911, of England, which is substantially similar to our own statute, the issue to be decided by the court was whether the stage was a "captive animal in captivity or confinement". Parker, C.J., at page 49, in interpreting these words, said:

"he sole question, therefore, is whether, in the circumstances of this case, the stag, once it had fallen and was being dragged into and kept in the enclosure, was in captivity or confinement."

At page 50 he continues:

"So far as the cases are concerned, there is really no case to which this court has been referred which is of any real assistance. *Steele v. Rogers* (1912), 28 T.L.R. 198, concerned whales which were stranded on the foreshore and were surrounded by a crowd of people. One was cut with a knife by a member of the crowd. The crowd exercised no acts of dominion over the whale and its inability to get away was in no sense due to the crowd, but due to the fact that it was stranded above the waterline. In that case Pickford, J., said (106 L.T. 79, 80): "I think 'in captivity or close confinement' means "something more than merely temporarily being unable to get away "from the spot upon which they are."

The question here, however, is whether something more than capture, in other words, some further acts of dominion, are necessary before it can be said that the animal is in captivity."

And again, at page 51 he continues:

[*page148] "I think that, on the whole, just as in *Steele v. Rogers* (106 L.T. 79, 80), a mere temporary inability to get away did not amount to a state of captivity, so here something more than mere

captivity, some period of time during which acts of dominion are exercised over the animal, is necessary before the animal can be said to be in a state of captivity."

12 It would appear therefore on a proper interpretation of Section 3 of the Protection of Animals Act that this section of the statute was intended to protect from acts of cruelty, animals in captivity or confinement. The two leading cases on this issue, i.e. *Steele v. Rogers* and *Rowley v. Murphy* above-referred to, have ruled that the mere stranding of a whale or the capturing of a stag through its becoming temporarily disabled due to an accident can be said to have put these animals in captivity or confinement within the meaning of the equivalent provision of our Section 3 in the Protection of Animals Act, 1911, of England. As stated in both cases, something more than the mere capturing of the animal is necessary before it can be said to be in captivity or confinement. In the case at hand the dolphin was in the process of being captured, though in a cruel way, when the respondent was stopped by the officer, and the dolphin taken from him in a badly injured condition. Though the animal had apparently been subdued, yet it was still alive and, though unlikely, it might yet have escaped capture. In these circumstances it cannot be said that the dolphin was a captive animal. As we are governed by the definition of "animal" and "captive animal" as set out in Section 2 of the Act, obviously the first portion of the definition of "animal" in Section 2 is of such a general nature that it covers every conceivable kind of creature which could possibly be so classified. Nevertheless, that definition restricts its application to those animals which may be domestic or captive animals, leaving outside its scope animals which are neither domestic nor captive. As I have ruled that the dolphin in this case was not a "captive animal" as defined in Section 2(b) of the Protection of Animals Act, and not being a domestic animal, it is not entitled to the protection from acts of cruelty provided by Section 3 of that Act.

13 Accordingly I confirm the findings of the learned magistrate who came to the same conclusion in this matter, and I dismiss this appeal without costs.

Accused acquitted.

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